

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

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U.S. DISTRICT COURT
SOUTHERN DIST. OHIO
EAST. DIV. COLUMBUS

JOHNNY P. CROCKETT,

Petitioner,

v.

CASE NO. 2:13-CV-658
CRIM. NO. 2:99-CR-104(3)
JUDGE JAMES L. GRAHAM
MAGISTRATE JUDGE ABEL

UNITED STATES OF AMERICA,

Respondent.

OPINION AND ORDER

On December 16, 2013, the Magistrate Judge issued a Report and Recommendation pursuant to Rule 4 of the Rules Governing Section 2255 Cases in the United States District Courts recommending that the instant motion to vacate, set aside or correct sentence be transferred to the United States Court of Appeals for the Sixth Circuit for authorization for filing as a successive petition. Doc. No. 281. Petitioner has filed an *Objection* to the Magistrate Judge's recommendation. Doc. No. 283. For the reasons that follow, Petitioner's *Objection*, Doc. No. 283, is **OVERRULED**. The *Report and Recommendation* is **ADOPTED** and **AFFIRMED**. This action is hereby **TRANSFERRED** to the United States Court of Appeals for the Sixth Circuit for filing as a successive petition.


Petitioner objects to the Magistrate Judge's recommendation that this case be transferred to the United States Court of Appeals. He argues that this case is not a successive 2255 petition, because he raises an issue he did not raise previously; he raises a claim under *Alleyne v. United States*, -- U.S. --, 133 S.Ct. 2151 (2013), which is based on a new interpretation of a substantive criminal statute. *Objection*, PageID #2628.

Petitioner's argument that this case does not constitute a successive petition in view of his argument based on *Alleyne* fails. Other courts to consider the issue likewise have concluded that a claim under *Alleyne* must be transferred to the Sixth Circuit for authorization for filing as a successive petition, if the petitioner has pursued prior § 2255 relief. *See e.g., Coronado v. United States*, No. 2:07-cr-124(1), 2013 WL 6199235, at *2 (S.D. Ohio Nov. 27, 2013); *McCaskill v. United States*, No. 13-cv-1946, 2013 WL 3817426, at *2 (E.D. Mich. July 23, 2013); *Berry v. United States*, No. 2:13-cv-723, 2013 WL 3835410, at *2 (S.D. Ohio July 24, 2013); *United States v. Sanders*, No. 4:03-cr-154, 2013 WL 5707808, at *2 (N.D. Ohio Oct. 18, 2013).

Petitioner's *Objection*, Doc. No. 283, is **OVERRULED**. The *Report and Recommendation* is **ADOPTED** and **AFFIRMED**. This action is hereby **TRANSFERRED** to the United States Court of Appeals for the Sixth Circuit for filing as a successive petition.

IT IS SO ORDERED.

Date: March 18, 2014


JAMES L. GRAHAM
United States District Judge